

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6863 OF 2023
(Arising out of SLP(C)No.22879 of 2022)

DADARAO SHIVLAL CHAVHAN

... APPELLANT

Versus

THE STATE OF MAHARASHTRA & ORS.

... RESPONDENTS

WITH

CIVIL APPEAL No.6864 OF 2023
(Arising out of SLP(C)No.23005 of 2022)

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties and carefully perused the material placed on record.
3. The Additional Labour Commissioner - respondent No.2 herein published an advertisement for recruitment to Group 'C' posts of Clerk-cum-Typist and Group 'D' posts of Peons. In all, 31 posts of Clerk-cum-Typist were to be filled under Group 'C'. Out of 14 posts in Open Category, 9 posts were earmarked for Open General Category. The appellants herein applied for the posts of Clerk-cum-Typist and Peon in Open General Category. They were selected and their names were included in the selection list published by respondent No.2. Subsequently, the appellants were issued appointment orders for the post of Clerk-cum-Typist as well as Peon on 17.04.2017.

4. The selection and appointment of the appellants was challenged by one Samir Rafiq Bagwan, belonging to the Reserved Category, before the Maharashtra Administrative Tribunal, Mumbai (for short, 'the Tribunal') on the ground that though he got higher marks than the appellants but was not considered for the Open Category posts.

5. During the pendency of those proceedings, the State Government constituted a new Regional Level Selection Committee to take corrective steps and pursuant to the Report submitted by that Committee, a revised selection list was prepared and published on 13.08.2018. As the names of the appellants were not included in the revised selection list, they were given show cause notice as to why their services should not be terminated.

6. The aggrieved appellants approached the Tribunal but their Original Applications were turned down. They unsuccessfully challenged the order of the Tribunal before the High Court as their Writ Petitions have been dismissed vide impugned judgment dated 15.11.2022, primarily on the ground that the appellants being lower in merit have no indefeasible right to seek appointment and no equitable considerations can be said to have arisen in their favour merely because they have continued in service by virtue of interim orders dated 01.11.2018 and 21.11.2018, passed by the High Court.

7. Learned counsel for the appellants vehemently urges that since the appellants, by now, have put in more than five and a half years of service, though under the protection granted by the Courts, this is a fit case to invoke powers under Article 142 of the Constitution and direct the respondent - authorities to adjust

them against the vacancies that may be available in any part of the State of Maharashtra. It is also submitted by learned counsel that by now, the appellants are overage, and will not be able to compete for public employment in the future.

8. Having given our thoughtful consideration to the submissions advanced by learned counsel for the parties, it appears to us that no mandamus can be issued to the respondents to appoint the appellants and/or retain them in service, despite they being lower in merit. That will amount to denial of equal opportunity to the candidates higher in merit. We, therefore, do not find any ground to interfere with the impugned orders passed by the Tribunal or the High Court to that extent.

9. As regards to the adjustment of the appellants against available vacancies in other parts of the State, it essentially involves a policy decision, for which, the State authorities shall be at liberty to take an appropriate decision. They may consider the claim of the appellants sympathetically but not at the cost of the candidates higher in merit.

10. We, however, find some merit in the claim of the appellants, that they have become overage during the pendency of these proceedings and deserve to be given a fair opportunity to compete for public employment. Suffice it to observe that if the State Government does not accommodate/adjust the appellants against available vacancies, as observed above, in that case, the appellants shall be granted the benefit of age relaxation and shall be given one opportunity to compete for public employment in the future after granting age relaxation.

11. With the aforesaid directions, the appeals stand disposed of. The impugned judgment of the High Court stands modified accordingly.

12. In view of the order passed in the appeals, there is no need to pass separate orders on the application for intervention and the same stands disposed of as such.

13. As a sequel to the above, the pending interlocutory applications also stand disposed of.

.....J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
OCTOBER 16, 2023.

ITEM NO.3

COURT NO.5

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).22879/2022

(Arising out of impugned final judgment and order dated 15-11-2022 in WP No.12819/2018 passed by the High Court of Judicature at Bombay)

DADARAO SHIVLAL CHAVHAN

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

IA No.194742/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No.194743/2022 - EXEMPTION FROM FILING O.T.

IA No.182618/2023 - INTERVENTION APPLICATION

WITH

SLP(C) No. 23005/2022 (IX)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 195844/2022

FOR EXEMPTION FROM FILING O.T. ON IA 195845/2022

FOR VACATING STAY ON IA 155979/2023

FOR EXEMPTION FROM FILING O.T. ON IA 155980/2023

FOR EXEMPTION FROM FILING O.T. ON IA 156358/2023

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 208372/2023

FOR EXEMPTION FROM FILING O.T. ON IA 208373/2023

IA No. 195844/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 195845/2022 - EXEMPTION FROM FILING O.T.

IA No. 208373/2023 - EXEMPTION FROM FILING O.T.

IA No. 156358/2023 - EXEMPTION FROM FILING O.T.

IA No. 155980/2023 - EXEMPTION FROM FILING O.T.

IA No. 208372/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 155979/2023 - VACATING STAY)

Date : 16-10-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Mr. Uday B. Dube, AOR

Mr. Sudhanshu S. Choudhari, AOR

Ms. Rucha A. Pande, Adv.

Mr. M. Veeraragavan, Adv.
 Ms. Gautami Yadav, Adv.
 Ms. Pranjal Chapalgaonkar, Adv.

For Respondent(s) Mr. Nachiketa Joshi, Adv.
 Mr. Siddharth Dharmadhikari, Adv.
 Mr. Aaditya Aniruddha Pande, AOR
 Mr. Sourav Singh, Adv.
 Mr. Aditya Krishna, Adv.

Mr. M. Y. Deshmukh, AOR
 Ms. Manjeet Kirpal, Adv.
 Ms. Adviteeya Sharma, Adv.

Mr. Amol B. Karande, AOR
 Mr. N Rao, Adv.
 Mr. Aditya Yadav, Adv.
 Mr. Shivang Singh, Adv.
 Ms. Palak Mathur, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

Leave granted.

The appeals stand disposed of in terms of the signed order.

In view of the order passed in the appeals, there is no need to pass separate orders on the application for intervention and the same stands disposed of as such.

As a sequel to the above, the pending interlocutory applications also stand disposed of.

(SATISH KUMAR YADAV)
 DEPUTY REGISTRAR

(PREETHI T.C.)
 COURT MASTER (NSH)
 (Signed order is placed on the file)